

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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May 30, 2006

Memo to Counsel Re: MDL-15863, Janus Subtrack
Wiggins v. Janus Capital Group Inc., et al.,
Civil No. JFM-04-818

Dear Counsel:

I have reviewed the memoranda submitted in connection with plaintiff's motion for reconsideration of the order entered March 1, 2006 or alternatively for leave to replead.

The motion will be treated as one for leave to file a second amended complaint and, as such, will be granted. The addition of the words "and who still held Janus Capital shares as of September 3, 2003" to the class definition cures the problem I identified in my letter ruling of February 27, 2006. It may be, as defendants contend, that plaintiff should have anticipated this issue prior to the Supreme Court's decision in *Dura Pharmaceuticals, Inc. v. Broudo*, 125 S.Ct. 1627 (2005). However, any error they made in that regard should not preclude them from pursuing arguably meritorious claims, particularly in light of the liberality with which Fed. R. Civ. P. 15(a) must be construed. Of course, in permitting the filing of the amended complaint I am not passing upon the other arguments that defendants have made concerning the alleged deficiencies in plaintiff's claims.

Plaintiff should formally file its second amended complaint on or before June 2, 2006. Defendants may then file a motion to dismiss it. Please confer with one another and, on or before June 9, 2006, submit to me a proposed briefing schedule on defendants' anticipated motion to dismiss.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as

Very truly yours,

/s/

J. Frederick Motz

United States District Judge